UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
CHARLOTTE, NORTH CAROLINA

STATEMENT OF LAW GOVERNING APPLICATIONS FOR CANCELLATION OF REMOVAL FOR CERTAIN NON-PERMANENT RESIDENTS (INA § 240A(b)(1))	)	IN REMOVAL PROCEEDINGS File No. (b) (6) [redacted] (b) (6) [redacted]

NOW COMES the Court, and adopts and incorporates herein by reference the following statement of law in its oral decision rendered in adjudicating the EOIR Form 42B application for cancellation of removal under INA § 240A(b)(1) submitted in the above-captioned case.

I. Evidence

The Court takes administrative notice of the country conditions as described in the most recent U.S. Department of State Human Rights Practices Report for the country of removal. 8 C.F.R. § 1208.12(a); *Quitanilla v. Holder*, 758 F.3d 570, 574 n. 6 (4th Cir. 2014); *Ai Hua Chen v. Holder*, 742 F.3d 171, 179 (4th Cir. 2014).

The Court has considered all of the documentary and testimonial evidence submitted by the parties contained in the record of proceedings. 8 C.F.R. § 1240.9.

II. Cancellation of Removal

A. Burden of Proof

The alien must satisfy the requirements for submitting information or documentation in support of the desired relief. INA § 240(c)(4)(B). To be eligible for cancellation of removal under INA § 240A(b)(1), an applicant must prove that he or she:

1) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding service of the charging document and up to the time of application;

2) has been a person of good moral character for the 10 years prior to a final administrative order;

3) has not been convicted of an offense under certain specified sections of the Act (sections 212(a)(2), 237(a)(2), or 237(a)(3) of the Act); and

4) establishes that removal would result in exceptional and extremely unusual hardship to the applicant's spouse, parent, or child, who is a United States citizen or lawful permanent resident.

The respondent must demonstrate that he or she has been a person of good moral character during the ten years immediately preceding the application for cancellation of removal. INA § 240A(b)(1)(B). The ten-year period of good moral character is calculated backward from the date on which the final administrative decision is entered by the Immigration Court or the Board. *Matter of Garcia*, 24 I&N Dec. 179 (BIA 2007); *Matter of Ortega-Cabrera*, 23 I&N Dec. 793, 797-798 (BIA 2005).

The respondent bears the burden to establish the requisite hardship. *See* INA § 240A(b)(1)(D). To establish exceptional and extremely unusual hardship an applicant must demonstrate that a qualifying relative would suffer hardship that is substantially different from or beyond that which would ordinarily be expected to result from the alien's deportation, but need not show that such hardship would be "unconscionable." Hardship factors relating to the applicant may be considered only insofar as they might affect the hardship to a qualifying relative. *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002); *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001).

B. Credibility

In acting on applications for cancellation of removal for certain nonpermanent residents, an immigration judge shall consider any credible evidence relevant to the application. INA § 240A(b)(2)(D). Thus, certain provisions of the REAL ID Act of 2005 regarding corroboration and credibility are applicable. *See Matter of Almanza-Arenas*, 24 I&N Dec. 771, 774 (BIA 2009) (stating that the REAL ID Act applies to applications for cancellation of removal and adjustment of status for certain nonpermanent residents). In determining whether an applicant has met their burden of proof, the immigration shall weigh the credible testimony along with other evidence of record. INA § 240(c)(4)(B). Where the immigration judge determines that the applicant should provide evidence which corroborates otherwise credible testimony, such evidence must be provided unless the applicant demonstrates that they do not have the evidence and cannot reasonably obtain it. *Id.*

An immigration judge must provide specific, cogent reasons for making an adverse credibility determination. *Djadjou v. Holder*, 662 F.3d 265, 273 (4th Cir. 2011). In evaluating an asylum applicant's testimony, "omissions, inconsistencies, contradictory evidence and inherently improbable testimony are appropriate bases for making an adverse credibility determination." *Id.* Even the existence of only a few such inconsistencies can support an adverse credibility determination. *Id.* An Immigration Judge's "credibility findings supported by substantial evidence" are given "broad but not absolute" deference. *Id.* (internal citation omitted). "[O]missions, inconsistent statements, and contradictory evidence are all cogent reasons that support an adverse credibility finding." *Kourouma v. Holder,* 588 F.3d 234, 243 (4th Cir. 2009) (citing *Dankam v. Gonzales*, 495 F.3d 113, 121 (4th Cir. 2007)).

C. Corroboration

The REAL ID Act altered the INA's requirement regarding corroborating evidence. *Singh v. Holder*, 699 F.3d 321, 328 (4th Cir. 2012). Pursuant to the REAL ID Act, "when a trier of fact is not fully satisfied with the credibility of an applicant's testimony standing alone, the trier of fact may require the applicant to provide corroborating evidence 'unless the applicant does not have the evidence and cannot reasonably obtain the evidence.'" *Id.* at 329 (citations omitted).

Evidence such as letters or statements from family members or friends of an applicant for relief do not substantially corroborate their claim if prepared by a self-interested witness not subject to cross-examination, such that the trustworthiness of the declarant cannot be determined. *Djadjou v. Holder*, 662 F.3d 265, 276-77 (4th Cir. 2011).

D. Discretion

When an applicant for cancellation of removal establishes their statutory eligibility for relief, an Immigration Judge still retains discretion to grant or deny the application, and the applicant must establish that he or she warrants the relief sought. *Sorcia v. Holder*, 643 F.3d 117, 119 (4th Cir. 2011) (citing *Matter of C-V-T*, 22 I&N Dec. 7 (BIA 1998)).

III. Post-Conclusion Voluntary Departure

An alien who requests post-conclusion voluntary departure under INA § 240B(b)(1)(B) must establish they have demonstrated good moral character for the previous five years from the date of the application; have the necessary travel documents and means to pay for their travel; agree to depart the United States as ordered; and otherwise establish they merit a favorable exercise of discretion. *Matter of Pinzon*, 26 I&N Dec. 189, 196 (BIA 2013).

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Date

V. STUART COUCH
United States Immigration Judge
Charlotte, North Carolina